

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DR. ALYSSA FRIEDBERG, et al.,)	Civil No. 21-00068 LEK-KJM
)	
Plaintiffs,)	FINDINGS AND
)	RECOMMENDATION TO DENY
vs.)	PLAINTIFFS' MOTION FOR
)	DEFAULT JUDGMENT AND
CATHY BETTS, et al.,)	CORRECTED MOTION FOR
)	DEFAULT JUDGMENT
Defendant.)	
_____)	

FINDINGS AND RECOMMENDATION TO DENY
PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT
AND CORRECTED MOTION FOR DEFAULT JUDGMENT

On January 29, 2021, Plaintiffs Dr. Alyssa Friedberg and Paul Shindell (collectively, "Plaintiffs") filed a Complaint and Request for Injunction. ECF No. 1. On April 19, 2021, Plaintiffs filed an Amended Complaint and Request for Injunction ("First Amended Complaint"). ECF No. 34.

On May 4, 2021, Plaintiffs filed a Motion for Default Judgment against Defendants Cathy Betts, Elladine Olevao, Kintaro Yonekura, Iwalani Kaauwai-Herrod, Kirstie Kashima, and the Hawaii Department of Human Services (collectively, "Defendants"). ECF No. 43. That same day, Plaintiffs filed a Corrected Motion for Default Judgment against the Defendants. ECF No. 45. At a hearing on May 7, 2021 regarding a different filing in this case, Plaintiffs clarified

to the Court that the Corrected Motion for Default Judgment differs from the Motion for Default Judgment in that it corrects the date on which Plaintiffs served a copy of the Motion for Default Judgment to Defendants' attorney. After Plaintiffs filed their initial Motion for Default Judgment and before Plaintiffs filed their Corrected Motion for Default Judgment, Defendants filed their Answer to the First Amended Complaint. ECF No. 44.

The Court elects to decide this matter without a hearing pursuant to Rule 7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii. For the reasons set forth below, the Court FINDS AND RECOMMENDS that the district court DENY the Motion for Default Judgment and the Corrected Motion for Default Judgment.

DISCUSSION

Federal Rule of Civil Procedure 55 governs the process for entry of default and default judgment:

- (a) **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
- (b) **Entering a Default Judgment.**
 - (1) ***By the Clerk.*** If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk – on the plaintiff's request, with an affidavit showing the amount due – must enter judgment for that

amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

- (2) ***By the Court.*** In all other cases, the party must apply to the court for a default judgment. . . .

Fed. R. Civ. P. 55(a)-(b). The Ninth Circuit Court of Appeals has explained Rule 55 as requiring a “two-step process” consisting of: (1) seeking the clerk’s entry of default; and (2) filing a motion for entry of default judgment. *See Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009) (noting the “two-step process of ‘Entering a Default’ and ‘Entering a Default Judgment’”); *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently fails to understand the two-step process required by Rule 55.”).

Plaintiffs have not sought entry of default against Defendants, and the Clerk of Court has not entered default against Defendants. Moreover, Defendants have entered an appearance and are defending this case. The Court thus recommends that the district court deny the Motion for Default Judgment and the Corrected Motion for Default Judgment.

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CONCLUSION

Based upon the foregoing, the Court FINDS AND RECOMMENDS that the district court DENY the Motion for Default Judgment (ECF No. 43) and Corrected Motion for Default Judgment (ECF No. 45).

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, May 19, 2021.



A handwritten signature in blue ink, appearing to read "K. Mansfield".

Kenneth J. Mansfield
United States Magistrate Judge

Friedgberg, et al. v. Betts, et al., Civil No. 21-00068 LEK-KJM; Findings and Recommendation to Deny Plaintiffs' Motion for Default Judgment and Corrected Motion for Default Judgment